S.B.CIVIL MISC. APPEAL NO.1228/2006
(The New India Assurance Company Ltd. Vs. Mohan Dass & ors.)

Date of Order :: 30.08.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Jagdish Vyas for the appellant
Mr.Shambhoo Singh for the respondent Nos.1 & 2

In view of the short point involved and the claimants having appeared in caveat, with the consent of learned counsel for the parties, the matter has been heard finally.

This is insurer's appeal against the award dated 14.12.2004 made by the Motor Accidents Claims Tribunal, Bali camp Sumerpur in Claim Case No.112/2004 essentially seeking to question the quantum of compensation awarded in the sum of Rs.2,65,000/- to the claimants for the accidental death of their lone son Sewa Das, aged about 20 years.

Learned counsel Mr. Jagdish Vyas appearing for the insurer-appellant has contended that the Tribunal has seriously erred in taking the estimated income of the deceased at Rs.6,000/- per month though the claimants themselves came out with the case of his income at Rs.5,000/- per month and even in relation thereto, no proof has been adduced on record. Leaned counsel has submitted that in

view of the fact that deceased was not shown in any settled job and was not carrying any technical qualifications, the estimate of his present income at Rs.4,000/- per month has been on much higher side and the Tribunal has been seriously in error in further adding Rs.2,000/- per month towards future prospects. Learned counsel has submitted that though the Tribunal has rightly applied the multiplier of 5 in view of the age of the claimants at 70 years and 65 years respectively, however, the multiplicand of Rs.48,000/- per annum is based on arbitrary estimate of income and the multiplicand in this case could not exceed Rs.24,000/- and, therefore, the amount awarded by the Tribunal stands nearly double the amount of just compensation.

Learned counsel Mr.Shambhoo Singh appearing for the claimants in caveat has submitted that the claimants have lost their only son and the bread-earner in the late stage of their life and they have been left totally supportless and in view of the peculiar circumstances of the case, the Tribunal could not be said to have erred in awarding reasonable amount of Rs.2,65,000/- as compensation; where the pecuniary loss has been assessed at Rs.2,40,000/- and the non-pecuniary loss at Rs.20,000/- and funeral expenses at Rs.5,000/-.

Learned counsel for the claimants though supporting the impugned award submitted that of course the estimate of the income of deceased has been made at a bit higher side but at the same time it remains a fact that claimants have lost their only son in the late evening of their life and are left high and dry and are entitled for reasonable compensation. However, learned counsel in all fairness proposed that having regard to the facts and circumstances of the case, the award amount may be restated at a sum of Rs.2,25,000/-, that according to him remains the minimum of reasonable compensation in the fact situation of the present case.

Learned counsel appearing for the insurer responded to the proposition stated by the learned counsel for the claimants that in this case the amount of just compensation cannot stand beyond Rs.1,50,000/- and even if some extra component is added looking to the peculiar circumstances of the case, the claimants in any case would not be entitled for any amount more than Rs.1,75,000/-.

Having given a thoughtful consideration to the submissions made by learned counsel for the parties and having examined the impugned award and the evidence as read out by the learned counsel, this Court is of opinion that

the amount as awarded by the Tribunal is on the higher side and the award deserves to be modified appropriately.

The claimants alleged the income of deceased at Rs.5,000/- per month and his age at about 20 years. Though it has not been disputed that deceased was the only son of the claimants, however, at the same time, the facts remain that deceased was an unmarried person and the claimants are in the age bracket of about 60-70 years. Therefore, looking at the future certainties as well as uncertainties, the entire of 2/3rd of the income of the deceased cannot be taken towards loss of contribution for the parents. Moreover, when the deceased has not been shown in any settled job nor was having any technical qualification, the enhancement in the name of future prospects does not appear appropriate. Having regard to the circumstances of the case, even if income of deceased is taken at Rs.5,000/- per month as asserted by the claimants, the average loss of contribution for the parents cannot be taken more than half of the average income, i.e. Rs.2,500/- per month.

Taking loss of contribution at Rs.2,500/- per month, the multiplicand stands at Rs.30,000/- per annum. Though in view

of Second Schedule to the Motor Vehicles Act looking to the age of the claimants of 60-70 years, the multiplier of 5 could have been provided, however, looking to the fact that deceased was the only bread-earner of the family of the claimants and they were solely dependent upon him and looking to the fact that the claimant Mohan Dass has stated before the Tribunal that his wife was 10 years younger to him, this Court is of opinion that interest of justice shall be served if the multiplier of 6 is applied instead of 5.

Applying the multiplier of 6 to the multiplicand of Rs.30,000/-, the pecuniary loss comes to Rs.1,80,000/-. Having regard to the facts and circumstances of the case, the amount awarded by the Tribunal towards funeral expenses at Rs.5,000/- and Rs.20,000/- for non-pecuniary loss is retained. The claimants are, therefore, held entitled for compensation in the sum of Rs.2,05,000/- in place of Rs.2,65,000/- as awarded by the Tribunal. The Tribunal has allowed interest at the rate of 9% per annum from the date of filing of claim application i.e. 01.06.2004. Such rate of interest in the circumstances of the case deserves to be retained.

In the result this appeal succeeds and is partly allowed to the extent indicated above. The impugned award is

modified and the claimants are allowed compensation in the sum of Rs.2,05,000/- in place of the amount of Rs.2,65,000/- as awarded by the Tribunal. The claimants shall also be entitled to interest at the rate of 9% per annum from the date of filing of claim application. The amount payable under the modified award shall be deposited by the appellant within 30 days with the Tribunal. The Tribunal shall permit cash payment of Rs.50,000/- to each of the claimants as already ordered under the impugned award; and the remaining amount shall be kept in Monthly Income Scheme of Post Office and the claimants shall be entitled to receive periodical interest thereupon. No costs.

(DINESH MAHESHWARI), J.

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